

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

06 - 430

United States District Court		District <u>of Delaware</u>
Name (under which you were convicted): <u>Reginald Harris</u>		Docket or Case No.: <u>2006 JUL 13 AM 11:13</u>
Place of Confinement: <u>Delaware Correctional Center</u>		Prisoner No.: <u>173086</u>
Petitioner (include the name under which you were convicted): <u>Reginald Harris</u>		Respondent (authorized person having custody of petitioner): <u>Thomas Carroll</u>
The Attorney General of the State of <u>Delaware</u>		

FILED  
CLERK U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
2006 JUL 13 AM 11:13  
Receipt #  
144050

## PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Superior Court of New Castle County
- (b) Criminal docket or case number (if you know): 0402010364A
- (a) Date of the judgment of conviction (if you know): 9/29/04
- (b) Date of sentencing: 12/17/04
- Length of sentence: 80 year + 3 months
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case:  
3 counts of possession of a firearm, Trafficking in cocaine possession with intent to deliver, maintaining a vehicle, possession of a non-narcotic controlled substance, and carrying a concealed deadly weapon
- (a) What was your plea? (Check one)
 

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>
- If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Supreme Court of Delaware

(b) Docket or case number (if you know): 557, 2004

(c) Result: Affirmed Superior Court decision

(d) Date of result (if you know): \_\_\_\_\_

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: Illegal Search + Seizure

(g) Did you seek further review by a higher state court? Yes ☐ No ☐

If yes, answer the following:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result (if you know): \_\_\_\_\_

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: \_\_\_\_\_

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Superior Court of New Castle County

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): June 30, 2006

(4) Nature of the proceeding: Rule 61, Motion for Post-conviction Relief

(5) Grounds raised: Ineffective Assistance of Counsel

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

*Awaiting decision on Ineffective Assistance of Counsel claim.*  
*See: Attached "Motion to Stay"*

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Illegal Search + Seizure, "Exhausted Claim"

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

In violation of Petitioner's Fourth Amendment Constitutional Protection against unreasonable Search + Seizures, The petitioner was seized by police.

See: Separate Memorandum, pgs. 1 thru 11

Also See: "Motion to Stay" and Appendix - Exhibits A - D

(See: Wren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996))

(b) If you did not exhaust your state remedies on Ground One, explain why: \_\_\_\_\_

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: \_\_\_\_\_

GROUND TWO: "Exhausted Claim #2"

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Superior Court improperly denied defendant's motion for a mistrial following a police officer's improper reference to defendant's suppression-hearing in the presence of the jury. See: Separate Memorandum, Also See: Appendix - Order, August 15, 2005



(b) If you did not exhaust your state remedies on Ground Two, explain why: \_\_\_\_\_

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

- (e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: \_\_\_\_\_

N/A

GROUND THREE: Ineffective Assistance of Counsel at Trial and Direct Appeal in relation to Fourth Amendment violation

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See: "Separate Memorandum"

Also See: Appendix - Exhibits A thru D

Also See: "Motion to Stay"

(See: Strickland, 466 U.S. 668 (1984))

- (b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

(See: "Motion to Stay")

- (c) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(See: Exhibit - D, Post-conviction motion)



## (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Rule - 61 "Motion for Post-conviction relief"

Name and location of the court where the motion or petition was filed: Superior Court of New Castle County, 500 N. King St. Wilmington, DE 19801

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(See: Exhibit - D)

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: \_\_\_\_\_

GROUND FOUR: \_\_\_\_\_

N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) If you did not exhaust your state remedies on Ground Four, explain why: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

N/A

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: \_\_\_\_\_

N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: \_\_\_\_\_

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: \_\_\_\_\_

N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. \_\_\_\_\_

N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. (See: Appendix, Exhibit-D)

(Also See pg. -4 question -11 of this document)

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: N/A

(b) At arraignment and plea: N/A

(c) At trial: Kathryn Van Amerongen, Assistant Public Defender  
Carvel State Office Building, 820 North French St. Wilm., DE 19801

(d) At sentencing: Kathryn Van Amerongen

(e) On appeal: Kathryn Van Amerongen

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\* \_\_\_\_\_

N/A

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: "Order" for release  
of petitioner from unlawful imprisonment.

or any other relief to which petitioner may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

July 06, 2006 (month, date, year).

Executed (signed) on July 06, 2006 (date).

Reginald Harris  
Signature of Petitioner

\_\_\_\_\_  
\*(...continued)

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

Reginald Harris  
Plaintiff

v. \_\_\_\_\_

Thomas Carroll  
Defendant(s)

ORDER

IT IS HEREBY ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 200\_ that  
the attached Motion for Extension of Time has been read and considered.

IS IS ORDERED that the Motion is hereby GRANTED/DENIED.

IT IS FURTHER ORDERED THAT

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Judge

Certificate of Service

I, Reginald Harris, hereby certify that I have served a true  
and correct cop(ies) of the attached: WRIT OF HABEAS CORPUS, MEMORANDUM  
IN SUPPORT OF WRIT OF HABEAS CORPUS,  
MOTION FOR STAY OF UNEXHAUSTED CLAIM,  
APPENDIX TO PETITIONER'S WRIT OF HABEAS upon the following  
CORPUS  
parties/person (s):

2  
copies

TO: Clerk, United States  
District Court of Delaware  
844 North King Street, Lockbox-18  
Wilmington, DE 19801

1 ~~2~~ copies

TO: Timothy J. Donovan  
Deputy Attorney General  
Department of Justice  
Carvel State Office Building  
820 North French Street  
Wilmington, DE 19801

1  
copy

TO: Office of the Prothonotary  
Superior Court Building  
500 North King Street, Suite-500  
Wilmington, DE 19801

TO: Reginald Harris "FILE"  
Delaware Correctional Center  
1181 Paddock Road- B2, B-U-5  
Smyrna, DE 19977

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, 1181 Paddock Road. Smyrna, DE 19977.

On this 06<sup>th</sup> day of July, 2006  
Reginald Harris